

# ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5526

AN ORDINANCE authorizing the City Manager, or his designee, to execute on behalf of the City, an amendment to that certain Interlocal Agreement with King County, Clerk's Receiving No.15922, governing the allocation of additional funds made available from the Conservation Futures Fund, and amending the 2003-2004 Capital Investment Program (CIP) Budget by increasing CIP Plan No. P-AD-15, Property Acquisition by \$1,000,000.00 to reflect unanticipated revenues, said appropriation will offset \$1,000,000.00 in costs associated with the purchase of the Kim and Hendrichs properties which is adjacent to Meydenbauer Bay; furthermore, in compliance with King County requirements, said amendment will allocate an additional \$500,000.00 towards a future purchase within Bellevue's Lake-to-Lake Greenway/Open Space and Trail System.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN  
AS FOLLOWS:

Section 1. The City Manager, or his designee, is authorized to execute on behalf of the City, an amendment to that certain Interlocal Agreement with King County, Clerk's Receiving No.15922, governing the allocation of additional funds made available from the Conservation Futures Fund, and an amendment to the 2003-2004 Capital Investment Program (CIP) Budget by increasing CIP Plan No. P-AD-15, Property Acquisition by \$1,000,000.00 to reflect unanticipated revenues, said appropriation will offset \$1,000,000.00 in costs associated with the purchase of the Kim and Hendrichs properties which is adjacent to Meydenbauer Bay; furthermore, in compliance with King County requirements, said amendment will allocate an additional \$500,000.00 towards a future purchase within Bellevue's Lake-to-Lake Greenway/Open Space and Trail System.

Section 2. The appropriate administrative officials of the City are hereby authorized to receive monies and to expend the same as authorized in said Agreement, as amended.

Section 3. At the time of execution of said amendment and acceptance of said funds, all monies shall be deposited into CIP Plan No. P-AD-15 within the 2003 – 2004 Capital Investment Program.

Section 4. The City Manager or his designated representative shall have responsibility for the administration of said monies and shall have all authority necessary to enter into agreements regarding the use thereof.

Section 5. The approximate amount and source of revenue proposal and acceptance are:

ORIGINAL

King County Conservation Futures

\$1,000,000.00

Section 6. Upon execution of said amendment the budget for the 2003 – 2004 Capital Investment Program shall be amended by appropriating to those funds additional revenues in the amount stated and acceptance herein authorized.

<u>Description</u>	<u>Amount Appropriated</u>
2003 – 2004 Capital Investment Program	\$1,000,000.00

Provided however, if the actual revenue received from the source specified in said agreement should be more or less than the amount set forth herein, the appropriations shall be adjusted to equal the amount actually received.

Section 7. The Finance Director or her designee is authorized to make interfund loans from an appropriate City fund to the 2003 – 2004 Capital Investments Program in whatever amounts, for whatever duration or under whatever terms are appropriate and necessary to cover cash flow shortages in the 2003- 2004 Capital Investment Program that may be created.

Section 8. This ordinance shall take effect and be in force five (5) days after its passage and legal publication.

Passed by the City Council this 7th day of June, 2004, and signed in authentication of its passage this 7th day of June, 2004.

(SEAL)

Connie B. Marshall  
Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Jerome Y. Roaché  
Jerome Y. Roaché, Assistant City Attorney

Attest:

Myrna L. Basich  
Myrna L. Basich, City Clerk

Published June 11, 2004

ORIGINAL

**STATE OF WASHINGTON  
DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT  
LOCAL CAPITAL PROJECTS PROGRAM  
CAPITAL CONTRACT NUMBER 04-99300-001**

THIS CONTRACT, entered into by and between City of Bellevue (a unit of local government hereinafter referred to as the CONTRACTOR), and the Washington State Department of Community, Trade, and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, the DEPARTMENT is also given the responsibility to administer state funds and programs which are assigned to the DEPARTMENT by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has, in Laws of 2003, First Special Session, Chapter 26, (Section 144), made an appropriation to support the Local Capital Projects Program, and directed the DEPARTMENT to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the CONTRACTOR is eligible to receive funding for acquisition, construction, or rehabilitation (a venture hereinafter referred to as the "Project").

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. FUNDING

The funds awarded to the CONTRACTOR hereunder shall be a sum up to, but not to exceed \$740,625. The DEPARTMENT has retained the amount of \$9,375 for costs directly associated with managing the completion of this contract.

2. SERVICE PROVISIONS

- a) Funds awarded under this contract shall be used solely and specifically for capital construction costs associated with the Bellevue Open Space Enhancement, as contemplated in Laws of 2003, First Special Session, Chapter 26, (Section 144).
- b) The CONTRACTOR shall perform in accordance with the terms and conditions of this contract and the following attachments which, by this reference, are made a part of this contract:

ATTACHMENT A (Project Budget)

ATTACHMENT B (Certification of the Availability of Funds to Complete the Project)

ATTACHMENT C (Project Scope of Work)

3. SPECIAL CONDITION(S)

None.

4. CONTRACT PERIOD

- a) The effective date of this contract shall be the date of the last signature of the contracting parties.
- b) Unless terminated earlier pursuant to Section 9, 12, or 27, hereof, the termination date shall be June 30, 2007.

5. CERTIFICATION OF FUNDS

- a) The release of state funds under this contract is contingent upon the CONTRACTOR certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:
  - i) Eligible Project expenditures prior to the execution of this contract.
  - ii) Cash dedicated to the Project.
  - iii) Funds available through a letter of credit or other binding loan commitment(s).
  - iv) Pledges from foundations or corporations.
  - v) Pledges from individual donors.

- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. The DEPARTMENT will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to the DEPARTMENT'S approval.
- b) The CONTRACTOR shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for the DEPARTMENT'S review upon reasonable request.

6. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

The CONTRACTOR may be reimbursed, at the rate set forth elsewhere in this contract, for Project expenditures in the following cost categories:

- a) Real property, when purchased or acquired solely for the purposes of the Project;
- b) Design, engineering, architectural, and planning costs;
- c) Project management costs (from external sources only);
- d) Construction costs including, but not limited to, the following:
  - Site preparation and improvements;
  - Permits and fees;
  - Labor and materials;
  - Taxes on Project goods and services;
  - Capitalized equipment; and
  - Landscaping.

7. REIMBURSEMENT PROVISIONS

- a) Payments to the CONTRACTOR shall be made on a reimbursement basis only. For the purposes of this contract, reimbursement shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days.

- b) The DEPARTMENT shall reimburse the CONTRACTOR for one-hundred percent (100%) of eligible Project expenditures, up to the maximum payable under this contract. When requesting reimbursement for costs incurred or expenditures made, the CONTRACTOR shall submit to the DEPARTMENT a signed and completed Invoice Voucher (Form A-19), referencing the Project activity performed, and any appropriate documentation. The voucher must be certified by an official of the CONTRACTOR with authority to bind the CONTRACTOR. The final voucher shall be submitted to the DEPARTMENT within fifteen (15) days following the completion of work or other termination of this contract.
- c) Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. The DEPARTMENT will not release payment for any reimbursement request received unless and until the Project Status Report is received.
- d) After approving the Invoice Voucher and Project Status Report, the DEPARTMENT shall promptly remit a warrant to the CONTRACTOR.

8. EVALUATION AND MONITORING

- a) The CONTRACTOR shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the DEPARTMENT that are pertinent to the intent of this contract, including periodic site inspections.
- b) The CONTRACTOR shall provide the DEPARTMENT with photographs, either hard copy or electronically, which depict visually the progress made on the Project. Such photographs shall be submitted to the DEPARTMENT at the inception of the Project, upon 50 percent of completion, and upon completion, as applicable.
- c) The DEPARTMENT or the State Auditor and any of their representatives shall have full access to and the right to examine during normal business hours and as often as the DEPARTMENT or the State Auditor may deem necessary, all the CONTRACTOR'S records with respect to all matters covered in this contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this contract. Such rights last for six (6) years from the date final payment is made hereunder.

9. NONDISCRIMINATION PROVISION

- a) During the performance of this contract, the CONTRACTOR shall abide by all applicable federal and state nondiscrimination laws and regulations, including, but not limited to Chapter 49.60 RCW (Washington's Law Against Discrimination) and 42 U.S.C. 12101 et. seq. (the Americans With Disabilities Act [ADA]).
- b) In the event of the CONTRACTOR'S noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to remedy any such noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 24 of this contract.

10. CONTRACT MODIFICATIONS

The DEPARTMENT and the CONTRACTOR may, from time to time, desire to make changes to this contract. Any such changes that are mutually agreed upon by the DEPARTMENT and the CONTRACTOR shall be incorporated herein by written amendment. It is mutually agreed and understood that, except for the budget modifications described in Section 11 of this contract, no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto prior to implementation of the changes, and that any oral understanding or agreements not incorporated herein shall not be binding.

11. MODIFICATIONS TO THE PROJECT BUDGET

- a) Notwithstanding any other provision of this contract, the CONTRACTOR may, at its discretion, make modifications not to exceed ten percent (10%) of each line item in the Project Budget (Attachment A), hereof.
- b) The CONTRACTOR shall notify the DEPARTMENT in writing prior to making any budget modification or modifications that would exceed ten percent (10%) of any budget line item. Any such request shall require the written approval of the DEPARTMENT, and any such modifications shall be made in writing and signed by both parties, and attached to the Project Budget (Attachment A), hereof.
- c) Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 1 of this contract.

12. TERMINATION OF CONTRACT

- a) If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this contract or if the CONTRACTOR shall violate any of its covenants, agreements or stipulations of this contract, the DEPARTMENT shall thereupon have the right to terminate this contract and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after the DEPARTMENT'S submitting written notice to the CONTRACTOR describing such default or violation; Provided, that if more than twenty (20) days are required to correct any such default or violation and the CONTRACTOR has initiated appropriate corrective measures as reasonably determined by the DEPARTMENT, the DEPARTMENT will not terminate this CONTRACT for such default or violation.
- b) Notwithstanding any provisions of this contract, either party may terminate this contract by providing the other party with written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date.
- c) In the event this contract is terminated, the CONTRACTOR shall be reimbursed for eligible expenses incurred prior to the effective date of such termination and not otherwise paid for by the DEPARTMENT, as the DEPARTMENT reasonably determines.
- d) In the event funds are not reappropriated for this Project in the 2005 - 2007 biennial budget, this contract shall terminate on June 30, 2005.

13. SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this contract.

14. HOLD HARMLESS

- a) It is understood and agreed that this contract is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this contract. Each party hereto agrees to be responsible and assume liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability. In the case of negligence of more than one party, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.



- b) This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this contract. Each contract for services or activities utilizing funds provided in whole or in part by this contract shall include a provision that the DEPARTMENT and the state of Washington are not liable for damages or claims from damages arising from any subcontractor's performance or activities under the terms of the contracts.

15. RECAPTURE PROVISION

In the event that the CONTRACTOR fails to expend state funds in accordance with state law and/or the provisions of this contract, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for a period not to exceed six (6) years following termination of the contract. Repayment by the CONTRACTOR of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the DEPARTMENT is required to institute proceedings to enforce this recapture provision, the DEPARTMENT shall be entitled to its cost thereof, including reasonable attorney's fees.

16. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any real property improved or constructed with funds awarded under this contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this contract. This provision does not extend to claims that the DEPARTMENT may bring against the CONTRACTOR in recapturing funds expended in violation of this contract.

17. RELATIONSHIP BETWEEN THE PARTIES

The CONTRACTOR and its employees or agents performing under this contract are not deemed to be employees of the DEPARTMENT nor agents of the DEPARTMENT in any manner whatsoever, nor will they hold themselves out as nor claim to be officers or employees of the DEPARTMENT or of the state of Washington hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the state of Washington.

18. GOVERNING LAW AND VENUE

This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. Venue of any action at law between the parties arising out of this contract shall be the superior court of Thurston County, Washington.

19. SEVERABILITY

In the event any term or condition of this contract or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this contract that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this contract are declared severable.

20. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this contract are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of the DEPARTMENT, and shall meet and renegotiate the contract accordingly.

21. ENTIRE AGREEMENT

This contract and all attachments hereto contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract and attachments shall be deemed to exist or to bind any of the parties hereto.

22. SIGNAGE AND MARKERS

If, during the period covered by this contract, the CONTRACTOR displays signs or markers or circulates any communication identifying the financial participants in the Project, any such sign, marker, or communication must identify the State of Washington as a participant. The provisions of this section shall also apply to any permanent signs or markers displayed at the Project site.

23. DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The dispute resolution team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the CONTRACTOR, and a third party mutually agreed upon by both parties. The dispute resolution team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial setting.

24. PREVAILING WAGE LAW

The Project funded under this contract may be subject to state prevailing wage law (Chapter 39.12 RCW). The CONTRACTOR is advised to consult the Washington Department of Labor and Industries and/or private counsel to determine whether prevailing wages must be paid. The DEPARTMENT is not responsible for determining

whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

25. CHANGE OF OWNERSHIP OR USE

- a) The CONTRACTOR understands and agrees that any and all real property or facilities acquired, constructed, or rehabilitated using state funds under this contract shall be held and used by the CONTRACTOR for the express purpose or purposes stated elsewhere in this contract for a period of at least ten (10) years from the date the subject facility is occupied.
- b) In the event the CONTRACTOR is found to be out of compliance with this section, the CONTRACTOR shall repay to the state general fund the principal amount of the grant as stated in Section 1, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized.

26. HISTORICAL AND CULTURAL ARTIFACTS

In the event that historical or cultural artifacts are discovered at the Project site during construction, the CONTRACTOR shall immediately stop construction and notify the local historical preservation officer and the state historical preservation officer at the Office of Archaeology and Historic Preservation.

27. REAPPROPRIATION

- a) The parties hereto understand and agree that any state funds not expended by June 30, 2005, will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this contract shall be contingent upon the terms of such reappropriation.
- b) In the event any funds awarded under this contract are reappropriated for use in a future biennium, the DEPARTMENT reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

*{Rest of page left blank intentionally}*

28. ADMINISTRATION

- a) The CONTRACTOR'S representative shall be Edward R. Oberg.
- b) The DEPARTMENT'S representative shall be Daniel Aarthun.

IN WITNESS WHEREOF, the DEPARTMENT and the CONTRACTOR have executed this contract as of the date and year written below.

\_\_\_\_\_  
Nancy K. Ousley, Assistant Director  
Local Government Division  
Department of Community, Trade, and  
Economic Development

\_\_\_\_\_  
Federal Tax ID #: 91-6007020

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

*Alice Blado*  
Assistant Attorney General

Date: 3/31/04

**ATTACHMENT A  
PROJECT BUDGET**

<u>Line Item</u>	<u>Amount</u>
Site acquisition	\$1,850,000
<b>Total Contracted Amount:</b>	<b>\$1,850,000</b>

The CONTRACTOR, by its signature, certifies that the Project Budget set forth above has been reviewed and approved by the CONTRACTOR'S governing body or board of directors, as applicable, as of the date and year written below.

            
CTC

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**ATTACHMENT C**  
**PROJECT SCOPE OF WORK**

**Project Summary**

This contract involves the acquisition of property known as the McTavish Highlands, which is 22 acres of undeveloped dense forest. This property, which is a key component of the Kelsey Creek and Richards Valley Greenway and Open Space System, was acquired in August 2003.

Subject to the to  
Futures Levy F  
for the Projects  
additional fund  
City for the Pro  
through H. The  
Projects describ

In all other respects, the  
same as agreed to in the

This document shall be

IN WITNESS WHERE  
names in the spaces set

KING COUNTY

Ron Sims  
King County Executive

Date

Acting under the author  
Ordinance 14852:  
Dated:

Approved as to form:

NORM MALENG  
King County Prosecuti

## **ATTACHMENT H**

### **2003 CONSERVATION FUTURES LEVY CITY OF BELLEVUE ALLOCATION**

<b>Jurisdiction</b>	<b>Project</b>	<b>Allocation</b>
Bellevue	Meydenbauer Bay Park	\$1,000,000
Bellevue	Bellevue Greenway System	\$500,000
<b>TOTAL</b>		<b>\$1,500,000</b>

#### **Project Descriptions:**

**City of Bellevue – Meydenbauer Bay Park      \$1,000,000**

Meydenbauer Bay Park: This project consists of two waterfront parcels totaling .23 acres with over 75 feet of waterfront on Lake Washington Boulevard in Bellevue. Project Provision: the existing houses on each parcel will be removed following acquisition by the city.

**City of Bellevue - Bellevue Greenway System      \$ 500,000**

Bellevue Greenway System: This project consists of multiple properties in the identified in the Bellevue Greenway system. The City will get approval from King County for acquisition of specific parcels.